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Supreme Court of the United States

OCTOBER TERM, 1941.

No. 825.

IN THE MATTER

of

THE REORGANIZATION OF THE ELEVENTH WARD BUILDING AND LOAN ASSOCIATION OF NEWARK, NEW JERSEY.

BRIEF FOR RESPONDENT COMMISSIONER OF BANKING AND INSURANCE OF THE STATE OF NEW JERSEY IN OPPOSITION TO THE PETITION FOR WRIT OF *CERTIORARI*.

DAVID T. WILENTZ,
Attorney General of the State of New Jersey,
Attorney for Respondent, Commissioner of Banking and Insurance of the State of New Jersey.
State House,
Trenton, New Jersey.

LOUIS J. COHEN,
Assistant Attorney General,
Of Counsel.

Arthur W. Cross, Inc., Law Printers, 71-73 Clinton Street, Newark, N. J.

INDEX.

	PAGE
STATEMENT	1
ARGUMENT	3
Point 1. Building and Loan Associations are *quasi-public* corporations affected with a public interest	3
Point 2. Building and Loan Associations are subject to the police power	3
Point 3. Petitioners were afforded a hearing	4
Point 4. Petitioners were not deprived of their property without due process of law	5
CONCLUSION	7

Cases Cited.

PAGE

Bucsi v. *Longworth B. & L. Assn.*, 119 N. J. L. 120 2

Doty v. *Love*, (1934) 295 U. S. 64 ..... 3, 4, 6, 7

Gibbes v. *Zimmerman* (1933) 290 U. S. 326 4

Home Bldg. & Loan Assn. v. *Blaisdell*, (1934) 290 U. S. 398 ..... 3, 4, 7

Hopkins Federal Savings and Loan Assn. v. *Cleary*, (1935) 296 U. S. 315 3

In re Eleventh Ward B. & L. Assn., 130 N. J. Eq. 414 4, 5

Timmons v. *Security Savings Bank of Marshalltown*, (1936) 299 U. S. 503, rehearing denied 299 U. S. 621 3

Treigle v. *Acme Homestead Assn.*, (1935) 297 U. S. 189 3

Veix v. *Sixth Ward B. & L. Assn.*, (1940) 310 U. S. 32 ..... 2, 3, 4

Statutes.

Judicial Code, Section 237(b) 7

New Jersey R. S. 17:12-106 1

New Jersey R. S. Title 17, Chapter 12, Article 15 2

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Statement.

A group of shareholders of the Eleventh Ward Building and Loan Association of Newark, New Jersey, the petitioners herein, have, pursuant to *R. S. 17:12-106*, filed a petition dissenting from the plan of reorganization of the association. The dissenters are seventy-five shareholders having investments of $258,937.18 as against a total number of 4717 shareholders with an aggregate investment of $8,488,182.21. The dissenters represent 1.59% of the shareholders in number, and 3.05% of the moneys invested (R. p. 47).

The Commissioner of Banking and Insurance is concerned with the public aspect of the present litigation and its necessary effect upon the program of rehabilitation of building and loan associations generally.

R. S. Title 17, Chapter 12, Article 15, is a link forged by the legislature to bolster and rehabilitate the building and loan structure which was in imminent danger of collapse by reason of the economic depression that befell the state in the year 1929. The economic welfare was at stake. *Veix* v. *Sixth Ward B. & L. Assn.,* (1940) 310 U. S. 32. The public interest directly involved, measured in monetary terms, is staggering. In *Bucsi* v. *Longworth B. & L. Assn.,* 119 N. J. L. 120, at page 127, the Court of Errors and Appeals of this state judicially noticed that:

> "* * * a large percentage of all persons in this state over the age of twenty-one are members of building and loan associations and that assets and holdings of building and loan associations approximate, if they do not exceed, one billion dollars ($1,000,000,000)."

The instant plan of reorganization is the culmination of the combined efforts of the Commissioner of Banking and Insurance, the officials of the Federal Savings and Loan Insurance Corporation, the representatives of the Reconstruction Finance Corporation, and the members of the Federal Home Loan Bank Board. It is the form employed by approximately 45 associations which heretofore reorganized in this state (R. p. 39).

ARGUMENT.

POINT 1.

Building and Loan Associations are *quasi-public* corporations affected with a public interest.

The public character of building and loan associations was emphasized in recent decisions of this Court. They are *quasi-public* in nature and are affected with a public interest. *Veix* v. *Sixth Ward B. & L. Assn., supra; Hopkins Federal Savings and Loan Assn.* v. *Cleary,* (1935) 296 U. S. 315; *Treigle* v. *Acme Homestead Assn.,* (1935) 297 U. S. 189.

POINT 2.

Building and Loan Associations are subject to the police power.

Building and loan associations, by reason of their character, are subject to the police power and may be reasonably regulated and controlled by legislative action. *Veix* v. *Sixth Ward B. & L. Assn., supra; Treigle* v. *Acme Homestead Assn., supra; Home Bldg. & Loan Assn.* v. *Blaisdell,* (1934) 290 U. S. 398.

The police power in the instant case was exercised for an end in fact public, and the means adopted were reasonably adapted to the accomplishment of that end. *Doty* v. *Love,* (1934) 295 U. S. 64; *Timmons* v. *Security Savings Bank of Marshalltown,* (1936) 299 U. S. 503, rehearing de-

nied 299 U. S. 621; *Gibbes* v. *Zimmerman,* (1933) 290 U. S. 326.

Private rights must yield to the proper exercise of the reserved power of the state. *Veix* v. *Sixth Ward B. & L. Assn., supra; Doty* v. *Love, supra; Home Bldg. & Loan Assn.* v. *Blaisdell, supra.*

POINT 3.

Petitioners were afforded a hearing.

Petitioners' contention that no "hearing" was afforded them upon their petition filed, lacks foundation in fact. The introduction of relevant and material evidence was permitted; the introduction of inadmissible evidence was denied. (R. pp. 138-141.) Testimony was taken with the privilege of cross examination allowed and exercised. (R. pp. 157-187; 220-242.)

An order allowing proof was entered (R. pp. 138-141).

Petitioners may not complain here of the action of the court in refusing to permit testimony concerning matter which was deemed inadmissible. The Court stated:

> "* * * the proffered evidence so far as it was revealed, would have been clearly inadmissible."
>
> *(In re Eleventh Ward B. & L. Assn.,* 130 N. J. Eq. 414.) (R. p. 267.)

This judicial action deprived petitioners of no constitutional right, nor were they denied a "hearing" within the meaning of the Fourteenth Amendment. No federal question is presented.

POINT 4.

Petitioners were not deprived of their property without due process of law.

The statute and the provision of the plan of reorganization permitting the crediting of the book value of shares pledged to secure mortgage loans against the principal amount of such loans in reduction thereof, does not violate the Fourteenth Amendment.

The crediting of full share values in reduction of mortgage loans in such reorganization is common practice and regarded as good financing. (R. p. 164.) Share insurance being an essential term of, was incorporated in, the plan of reorganization. The Federal Savings and Loan Insurance Corporation considers such practice essential to sound home financing, and requires the allowance of said credits as a prerequisite to its granting of share insurance. (R. p. 160.)

Such practice places all mortgages on a sound investment basis. The mortgagor's burden is lessened, and common benefit is enhanced through the avoidance of defaults and foreclosures.

The Court determined from the factual situation presented that:

> "Here the need for 'direct reduction' was found; and the finding is factually well-grounded."
>
> *(In re Eleventh Ward B. & L. Assn, supra.)* (R. p. 265.)

The plan of reorganization is reasonably adapted to accomplish the public end sought by the legislative policy. The particular provision here considered relative to the recasting of mortgage loans is a component and integral part of the plan heretofore determined as a whole to be fair and equitable.

Direct reduction of mortgage loans is authorized under the association's constitution (R. p. 191). It was the common practice to "recast" loans pursuant to this authority. The association now holds but 28 "sinking fund" mortgages sought to be recast. It has "straight reduction" mortgages totaling $1,818,645.61, most of which were originally "sinking fund" mortgages, "recast" on the same basis as provided in the plan of reorganization and now sought to be applied to the 28 mortgages.

The total share capital of the association is $8,488,-182.21. Petitioners' shares aggregate $259,937.68. The value of the shares pledged to secure the 28 "sinking fund" mortgages is $62,459.51. (R. pp. 192-193.) Petitioners' contention is that but 45% thereof, or $34,352.77, should be credited. This would allow a difference of $28,106.84 to be participated in by all members; affecting petitioners to the combined total extent of $1,052.27 (R. pp. 182-183). Constitutional objection may not be interposed on this score. *Doty* v. *Love, supra.*

The instant plan of reorganization is in no sense arbitrary or oppressive. It is designed to serve the public in a field indisputably affected with a public interest, and all its provisions, including the one presently considered, assume the category of means reasonably adapted to the end

sought. *Doty* v. *Love, supra; Veix* v. *Sixth Ward B. & L. Assn., supra; Home Building & Loan Assn.* v. *Blaisdell, supra.*

Conclusion.

There is want of a substantial federal question. The validity of a state statute is not in question, within the meaning of Section 237 (b) of the Judicial Code, and jurisdiction of this Court should not be invoked.

It is therefore respectfully urged that the application of petitioners for a writ of *certiorari* be denied.

Respectfully submitted,

David T. Wilentz,
Attorney General of the State of
New Jersey,
Attorney for Respondent, Commissioner
of Banking and Insurance of the State
of New Jersey.

Louis J. Cohen,
Assistant Attorney General,
Of Counsel.